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DEC 29 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

Federal Communications Commission
 Office of the Secretary

EB Docket No. 03-152

In the Matter of)	
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL)	Facility ID No. 9993
SERVICES, INC.)	
)	
Permittee of FM Station KAJP,)	
Firebaugh, California)	
)	
H.L. CHARLES D/B/A FORD CITY)	Facility ID No. 22030
BROADCASTING)	
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY)	Facility ID No. 37725
BROADCASTING)	
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	
)	
In re Application of)	
)	
WESTERN PACIFIC BROADCASTING, INC.)	File No. BR-19970804YJ
)	Facility ID No. 71936
For Renewal of License for AM Station KKFO,)	
Coalinga, California)	

To The Commission



**ENFORCEMENT BUREAU'S
OPPOSITION TO APPEAL OF RICHARD B. SMITH**

1 On December 15, 2003, Richard B. Smith ("Smith") filed an Appeal of the *Memorandum Opinion and Order* of Administrative Law Judge Arthur I. Steinberg (the "Presiding Judge") which denied Smith's August 27, 2003, "Petition for Leave to Intervene" ("Petition") in the above-captioned proceeding (the "*MO&O*").¹ The Bureau submits that the *MO&O* correctly denied Smith's Petition and thus opposes Smith's Appeal.

2 In his Petition, Smith maintained that he was a "party in interest" entitled to intervention because, as licensee of Station KMAK(FM), Orange Grove, California, it is possible that he can improve the facilities of his station by increasing the station's effective radiated power from 3 to 6 kW were the Commission to cancel the captioned permit for Station KNGS(FM), Coalinga, California, now held by William L. Zawila ("Zawila"). Smith also contended that he would be able to assist materially in the hearing, pointing to his role in having alerted the Commission to possible misrepresentations contained in Zawila's license application for the station.²

3. The *MO&O* denied Smith's Petition, concluding that he did not qualify as a "party in interest" entitled to intervention as of right pursuant to section 1.223(a) of the

¹ FCC 03M-52 (rel Dec 8, 2003)

² File No. BLH-990804KJ). Smith filed an Informal Objection to that application on November 17, 1999. He supplemented his Informal Objection in December 1999 and filed a complaint reiterating his misrepresentation allegation in December 2000. *See Order to Show Cause, Notice of Opportunity for Hearing, And Hearing Designation Order*, 18 FCC Rcd 14938, 14939, ¶ 3, 14940-41, ¶¶ 9-10 (2003) ("*OSC*"). *See also id.* at 14943-44, ¶ 22 and n 17

rules³ and that he also did not meet the requirement for discretionary intervention imposed by section 1.223(b) of the rules.⁴ In his Appeal, Smith contends that he qualifies as a party in interest because he would benefit, should the hearing result in the revocation of Zawila's construction permit for Station KNGS(FM).⁵ Smith also complains that denial of his Petition would "deprive him of the ability to participate in the full range of hearing processes," and would bar him from appealing rulings that he considers incorrect, including the rejection of his contention that section 312(g) of the Communications Act of 1934, as amended (the "Act"),⁶ requires the automatic expiration of the KNGS(FM) permit.⁷ Smith also disputes that he would not assist in the resolution of this proceeding's issues, contending that he would more vigorously pursue questions concerning the legitimacy of Zawila's permit than would the Bureau.⁸ Finally, Smith posits that denial of his Petition would send an "extremely dangerous message to the public," namely, that it would discourage future voluntary public participation in the licensing process.⁹

4 Discussion. At the outset, Smith's Appeal should be dismissed because it fails to comply with the Commission's rules. By using a 10-point, rather than 12-point font in the Appeal's seven multi-line footnotes, Smith has failed to comply with required

³ 47 C.F.R. § 1.223(a). See *MO&O* at 3, ¶ 7.

⁴ 47 C.F.R. § 1.223(b). See *MO&O* at 3, ¶ 8.

⁵ Appeal at 2-3, ¶¶ 5-7.

⁶ 47 U.S.C. § 312(g).

⁷ Appeal at 3, ¶ 8. See *OSC*, 18 FCC Rcd at 14943-44, ¶ 22.

⁸ Appeal at 4-5, ¶¶ 9-11.

⁹ *Id.* at 5, ¶ 12.

specifications as to pleadings¹⁰ and has thus unilaterally provided himself a waiver of the five-page limitation for his Appeal imposed by section 1.301(c)(5) of the Rules.¹¹ Consequently, the Commission should dismiss Smith's Appeal as unacceptable for filing.¹² However, even if the Commission considers Smith's Appeal on its merits, notwithstanding this deficiency, it should deny it.

5. As the *MO&O* correctly held and explained at 3, Smith does not qualify as a party in interest with respect to the captioned KNGS(FM) construction permit revocation proceeding, entitled to intervention as of right under Section 1.223(a). Smith is neither a competitor nor a listener of Station KNGS(FM). Rather, he is someone who could conceivably benefit from Station KNGS(FM)'s elimination.¹³ However, Smith fails to cite any support for the proposition (and the Bureau is aware of none) that such circumstances give one party in interest status. Thus, the *MO&O* correctly concluded, at paragraph 6, that Smith is not "a person aggrieved or whose interests are adversely affected by grant or denial of the application, nor has he shown that "a potential direct and substantial injury . . . could result [to him] from the outcome of the proceeding." Moreover, contrary to Smith's assertion, this proceeding does not "involve" an application for Station KNGS(FM); rather, it contemplates the possible revocation of the construction permit for the station. The *OSC* specifically deferred action on Zawila's

¹⁰ See 47 C.F.R. §§ 1.49(a), 1.301(c)(3)

¹¹ See 47 C.F.R. § 1.301(c)(5).

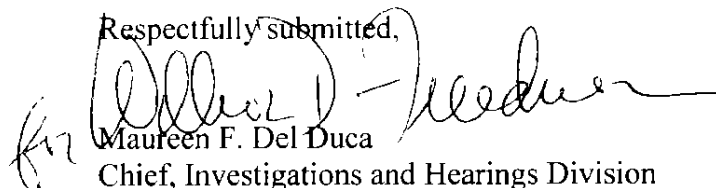
¹² See 47 C.F.R. § 1.49(a)

¹³ In this regard, the Bureau notes that Smith has provided no support whatsoever for his assertion that, but for the presence of Station KNGS(FM), he could obtain Commission authority to increase the power of Station KMAK(FM).

license application¹⁴ Consequently, Smith cannot meet the requirements for qualifying as an intervenor as of right pursuant to section 1.223(a) of the rules because he does not qualify as a party in interest and this proceeding does not involve an application for the station for which he claims to have an interest.


6 Smith also does not meet the requirement for discretionary intervention imposed by section 1.223(b) of the rules, as correctly concluded in the *MO&O* at 3-4. If a hearing occurs, Smith will clearly have a role – as one of several fact witnesses who can shed light on what Zawila did or did not do with respect to the construction of Station KNGS(FM). However, Smith has not demonstrated how his presence beyond so testifying, as a *party*, will assist the Commission in determining whether Zawila’s permit should be revoked or in resolving any of the other designated issues. Contrary to Smith’s musings, the Bureau has every intention of gathering and presenting all relevant evidence bearing on Zawila’s activities and representations concerning Station KNGS(FM) if the stay on the hearing imposed by the Presiding Judge is lifted¹⁵

7. Accordingly, the Commission should dismiss Smith’s Appeal, or, alternatively, deny it.

Respectfully submitted,

Maureen F. Del Duca
Chief, Investigations and Hearings Division
Enforcement Bureau

¹⁴ *OSC*, 18 FCC Rcd at 14939, n. 1.

¹⁵ *Order*, FCC 03M-39 (rel. Sept. 12, 2003).


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December 29, 2003¹⁶

¹⁶ By a December 18, 2003, telephone call to counsel for Smith, the Bureau confirmed that, contrary to the representation in the Appeal's Certificate of Service, the Bureau was served only by first class mail. Consequently, the deadline for filing the instant pleading is December 29, not December 22, 2003. *See* 47 C.F.R §§ 1.4(e)(g)(h); 1.301(c)(7).

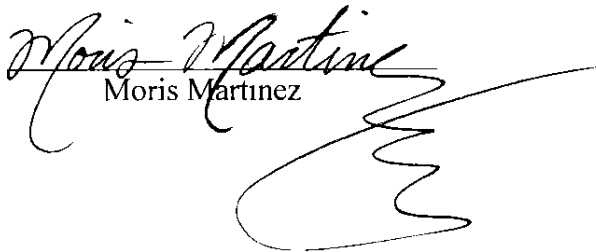
CERTIFICATE OF SERVICE

Moris Martinez, a clerk with the Investigations and Hearings Division of the Enforcement Bureau, certifies that he has, on this 29th day of December, 2003, sent, in the manner noted below, copies of the foregoing "Enforcement Bureau's Opposition to Appeal of Richard B. Smith" to:

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